Court No.3

Criminal Revision No. 39/2003

Vijay Ram Chamoli ……..Revisionist.

Vs.

1. State of Uttaranchal,

2. Smt. Parmila Chamoli ……Respondents.

Hon'ble Irshad Hussain, J.

This is a revision under section 397/401 of the Code of Criminal Procedure against the order dated 24.3.2003 whereby the Principal Judge Family Court Dehradun allowed interim maintenance to the respondent-wife at the rate of Rs. 5000/- per month with effect from 1.1.2003. The arrears were directed to be paid in three equal instalments.

(2) Heard Sri K.S. Verma learned counsel for the revisionist-husband and learned A.G.A. for the respondent No.1 State. None appear for the wife-respondent No.2.

(3). It is not in dispute, as is evidence from the averments under section 125 of the Code of Criminal Procedure, that the respondent No.2 is the second wife of the revisionist. The revisionist had three children from his first wife who had died. No children has yet been born from the respondent No.2 and she is residing separately with her father. The learned counsel for the revisionist submitted that the respondent No.2 is residing separately without any sufficient cause and is not entitled to maintenance. This aspect of the matter shall be considered after the evidence of parties is recorded for the disposal of the main application on merit. At the stage of awarding an interim maintenance it is sufficient if it is found that the wife is not being maintained by the husband and is living separately, on the basis of allegation of neglect by husband. Considering this award of interim maintenance can not be said to be unjust.

(4) As regards the quantum of interim maintenance is concerned learned counsel has submitted that it is highly exorbitant. The total salary of the revisionist is about Rs. 19000/- and after deduction he is getting less than Rs. 7000/- per month. Considering this aspect and also that the

revisionist has to maintain three children from first wife the rate of interim maintenance awarded by the learned Principal Judge Family Court is excessive. Since the respondent No.2 is residing with her father and she need to maintain her alone Rs. 2500/- as interim maintenance shall be just and proper and the revision is therefore to be allowed partly in these terms.

(5). The revision is partly allowed. The interim maintenance is reduced to Rs. 2500/- (two thousand & five hundred) per month to be payable from the date as mentioned in the impugned order and the arrears shall be paid in three equal instalments.

(6). The learned Principal Judge Family Court Dehradun shall expedite the disposal of application under section 125 of the Code of Criminal Procedure on merit.

(Irshad Hussain, J.)

Dated 22.9.03

ISB